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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 EUGENE BEAUREGARD and SUSAN
11 BEAUREGARD, and the marital community
12 composed thereof;

13 Plaintiffs,

14 v.

15 JOHN HILLOCK, et al.,

16 Defendants.

Case No. C09-1614RJB

ORDER DISMISSING
CASE

17 This matter comes before the court on review of the file, on plaintiffs Motion for Preliminary
18 Injunction (Dkt. 3), and on plaintiff's Motion for Permission to File Amended Complaint in Camera, filed
19 on November 23, 2009. The court has considered the relevant documents and the remainder of the file
20 herein.

21 INTRODUCTION

22 On November 12, 2009, plaintiffs filed a civil action against numerous individuals, alleging
23 causes of action for involuntary servitude, civil rights violations, RICO violations, and Sherman Act
24 violations. Dkt. 1. On November 12, 2009, plaintiffs filed a Motion for Preliminary Injunction. Dkt. 3.
25 On November 23, 2009, plaintiffs filed an amended complaint, and a Motion for Permission to file
26 Amended Complaint in Camera, apparently seeking to state a claim under the False Claims Act, 31
27 U.S.C. § 3729 and § 3730. Dkt. 6.

28 The court has carefully reviewed all of the materials filed by plaintiffs, and will address the claims

1 and issues presented in these materials, in the light most favorable to plaintiffs, and has afforded plaintiffs
2 the benefit of any doubt. *See Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th
3 Cir.1988). Since plaintiffs filed an amended complaint, that amended complaint will be the operative
4 document. "The amended complaint supersedes the original, the latter being treated thereafter as
5 non-existent." *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967).

6 FILING MATTERS

7 As an initial matter, the court should deal with issues regarding filing in this case. On November
8 23, 2009, plaintiffs filed Motion for Permission to File Amended Complaint in Camera, pursuant to the
9 False Claims Act, 31 U.S.C. § 3730(b)(1). Plaintiffs request that the Amended Complaint for Damages,
10 and for Declaratory and Injunctive Relief (hereafter Amended Complaint), filed with the motion, be filed
11 under seal. Plaintiffs' Motion for Permission to File Amended Complaint in Camera, filed on November
12 23, 2009, is **DENIED**. The Clerk is directed to file the Amended Complaint.

13 On November 23, 2009, plaintiffs filed a Praecipe, with a notation "Sealed Original", requesting
14 that the Clerk issue summonses in this case. On November 25, 2009, plaintiffs filed a "Sealed Praecipe,"
15 requesting that the Clerk issue summonses under seal, apparently pursuant to the False Claims Act.
16 Plaintiffs' request that the Clerk issue summonses, whether under seal or not, is **DENIED**. The Clerk is
17 directed not to issue the summonses requested by plaintiffs, but to file in the case all documents received
18 by plaintiff; those documents shall not be filed under seal. *See Western District of Washington Local*
19 *Rule 5(g)* regarding sealing of documents filed with the court.

20 LEGAL STANDARD

21 A federal court may dismiss *sua sponte* pursuant to Fed.R.Civ.P. 12(b)(6) when it is clear that the
22 plaintiff has not stated a claim upon which relief may be granted. *See Omar v. Sea-Land Serv., Inc.*, 813
23 F.2d 986, 991 (9th Cir.1987) ("A trial court may dismiss a claim *sua sponte* under Fed.R.Civ.P.
24 12(b)(6).... Such a dismissal may be made without notice where the claimant cannot possibly win relief.").
25 *See also Mallard v. United States Dist. Court*, 490 U.S. 296, 307-08 (1989) (there is little doubt a federal
26 court would have the power to dismiss frivolous complaint *sua sponte*, even in absence of an express
27 statutory provision). A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v.*
28 *Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984). *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th

1 Cir.1995)(Unless it is absolutely clear that no amendment can cure the defect, a pro se litigant is entitled
2 to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action.).

3 In this case, the court has reviewed the voluminous pleadings plaintiffs filed, in an attempt to
4 determine whether there are any viable causes of action in this case. The court notes that the 214 page
5 Amended Complaint does not comply with Fed.R.Civ.P. 8 (a)(2), which provides that a pleading for relief
6 must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”.
7 Plaintiffs’ pleadings discuss state and federal court proceedings that have already been concluded and that
8 have addressed the merits of many of the underlying issues in this case; make conclusory allegations with
9 little or no factual support for those allegations; and make presumptions about the motives of defendants,
10 with no factual support. In this order, the court has attempted to isolate the claims that plaintiffs appear to
11 be making and to determine whether those claims are viable or are frivolous, as having no basis in fact or
12 law.

13 DISCUSSION

14 **1. Lewis County Case: *Hillock et al v. Beauregard et al v. Merrill et al*, Lewis County** 15 **Superior Court No. 03-2-00924-3**

16 Pages 15 - 97 of the amended complaint set forth allegations and issues that involve a property
17 dispute and a state court action related to that property dispute (see citation above).

18 Plaintiffs allege that they own property in Lewis County. Defendants John Hillock, Sandra
19 Hillock, Edward Merrill, and Wanda Merrill own or owned property adjacent to or near plaintiffs’
20 property. A civil action was filed in Lewis County Superior Court, under Cause No. 03-2-00924-3. The
21 civil action, apparently filed in 2003, involved a dispute over boundary lines, water rights, and access.
22 The Lewis County Superior Court, a defendant in this case, issued an order quieting title in June of 2004.
23 Plaintiffs appealed the order to Division II of the Washington Court of Appeals, which affirmed the
24 decision of the Lewis County Superior Court. On September 7, 2006, the Washington Supreme Court
25 denied review.

26 The Amended Complaint in this case reargues the facts regarding plaintiffs’ property and water
27 rights. These issues were determined in the Lewis County case, although, in the instant case, plaintiffs
28 attempt to involve Lewis County sheriff’s employees, and attempt to allege claims under RICO and the

1 Sherman Act, in addition to civil rights claims, and a claim for Involuntary Servitude, all arising from the
2 Lewis County case. Plaintiffs have not stated a cognizable claim regarding the property dispute with the
3 Hillocks and the Merrills for a number of reasons, including the following: (1) The *Rooker-Feldman*
4 doctrine bars “cases brought by state-court losers complaining of injuries caused by state-court judgments
5 rendered before the district court proceedings commenced and inviting district court review and rejection
6 of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); (2)
7 Under the Federal Full Faith and Credit Statute, 28 U.S.C. § 1738, a federal court must give to a
8 state-court judgment the same preclusive effect as would be given that judgment under the law of the
9 State in which the judgment was rendered. *Takahashi v. Bd. of Trustees of Livingston*, 783 F.2d 848, 850
10 (9th Cir.) (quoting *Migra v. Warren City School Dist. Bd. of Education*, 465 U.S. 75, 81 (1984)), *cert.*
11 *denied*, 476 U.S. 1182 (1986); under Washington law, *res judicata*, or claim preclusion, prohibits the
12 same parties from litigating a second lawsuit on the same claim or any other claim that could have been,
13 but was not, raised in the first suit. *Roberson v. Perez*, 156 Wash.2d 33, 41 (2005); (3) United States
14 District Judge Franklin D. Burgess dismissed a case plaintiffs filed against the Hillocks and the Merrills,
15 *Beauregard v. Hillock, et al.*, C07-712FDB, on the basis that the federal court did not have jurisdiction,
16 and could not function as a court of appeal in the matter; the Ninth Circuit Court of Appeals affirmed the
17 district court; (4) in C07-712 FDB, Judge Burgess dismissed the Involuntary Servitude claim on the basis
18 that the federal court does not have appellate jurisdiction over that claim; the Ninth Circuit affirmed the
19 district court; and (5) plaintiffs’ attempts to reargue the facts related to the state court property dispute in
20 the guise of RICO and Sherman Act claims are frivolous and without merit. The court notes that the state
21 court also dealt with Mr. Hillock firing guns on his own property, and plaintiffs’ fear that they would be
22 shot by Mr. Hillock. Any claims related to the property dispute should be dismissed.

23 **2. Building Inspections and Permits, and Harassment by County Employees prior to**
24 **filing of C05-5738RJB on November 4, 2005**

25 The issues surrounding these claims appear primarily at pages 97 - 114 of the amended complaint.

26 Plaintiffs allege that Lewis County Employees harassed them by refusing to investigate their
27 complaints, and refused to let plaintiffs proceed with their plans for their property by doing improper
28 inspections and denying them necessary permits. It is difficult to determine the time line involved with

1 the allegations in these pages. Plaintiffs have not stated a cognizable claim regarding these issues for the
2 following reasons: (1) the claims are barred by *res judicata* because the building inspection/permitting
3 issues were determined against plaintiffs in *Beauregard v. Lewis County Washington*, C05-5738RJB; (2)
4 virtually all of the claims are barred by the statute of limitations; and (3) plaintiffs' attempts to reargue the
5 facts in the guise of RICO and Sherman Act claims are disingenuous; the claims are frivolous and without
6 merit. Any claims regarding building inspections, permits, and harassment by Lewis County employees,
7 prior to November 4, 2005, should be dismissed.

8 **3. Actions of Defendants After Filing of Complaint in *Beauregard v. Lewis County***
9 ***Washington*, C05-5738RJB, on November 4, 2005**

10 The issues surrounding these claims appear primarily at pages 114 - 134, and 184 - 207 of the
11 Amended Complaint.

12 It is difficult to determine the exact nature of the claims set forth in these sections of the Amended
13 Complaint. However, it appears that plaintiffs are alleging that, even after plaintiffs filed their complaint
14 in C05-5738RJB, defendants L. Michael Golden, Lewis County Prosecutor; former Prosecutor Douglas
15 Jensen; Lewis County Commissioners Richard Graham, Ron Averill, and F. Lee Grose; former Lewis
16 County Sheriff John McCroskey; Lewis County Sheriff Steve Mansfield; Director of Community
17 Development Robert Johnson; and Lewis County Building Official Fred Chapman, "are engaging in
18 conduct that is furthering the Hillocks' invasion of the Beauregards' legitimate property rights identified
19 in an easement from Weyerhaeuser." Amended Complaint, at 114. It appears that plaintiffs believe that
20 the Hillocks and Merrills; their attorneys Scott E. Blinks, Rene J. Remund; and J. Vanderstoep; and the
21 law firm of Vanderstoep, Remund, Kelly & Blinks, are involved with the county officials in violating
22 plaintiffs' rights.

23 *Civil Rights Claims.* Plaintiffs believe that these defendants are deliberately attempting to interfere
24 with plaintiffs' property rights, for the benefit of the Hillocks. Plaintiffs' appear to allege that these
25 officials are retaliating against plaintiffs for speaking out against the officials. Plaintiffs allege that these
26 officials violated their civil rights under 42 U.S.C. §§ 1981 (Involuntary Servitude), 1982, 1983 and
27 various other statutes, RICO, and the Sherman Act. There are no factual allegations, after November 5,
28 2005, supporting these claims. Plaintiffs have not shown facts supporting a cause of action for violation

1 of their civil rights.

2 *RICO Claims.* Plaintiffs allege that defendants violated the Racketeer Influenced and Corrupt
3 Organizations Act, 18 U.S.C. § 1961, *et seq.* (RICO) in the following manner:

4 (2) in conduct analogous to violation of 18 U.S.C. §1951, these Enterprise Defendants, while
5 designing to engage and/or engaging in conduct affecting interstate commerce, have taken
6 substantial steps to forcibly obtain and/or extort, and/or, have forcibly obtained and/or extorted
7 property from the Beauregards, where; (a) John Hillock has attempted to obtain property by force,
8 and/or has obtained property by force from the Beauregards by threat of violence, and/or; (b) the
Enterprise Defendants have under color of right, improperly forcibly obtained and/or have taken
substantial steps that improperly attempted to forcibly obtain property from the Beauregards; by
force with misuse of the legal process.

9 Amended Complaint, at 186.

10 RICO makes it unlawful for any person who has received income from a pattern of racketeering
11 activity to use or invest the income in any operation or interest affecting interstate commerce. 18 U.S.C.
12 § 1962. In order to state a RICO claim, plaintiff must plead (1) conduct (2) of an enterprise (3) through a
13 pattern (4) of racketeering acts (predicate acts) (5) constituting the proximate cause of injury to plaintiff's
14 property. 18 U.S.C. § 1862(c) and 18 U.S.C. § 1864(c); *Sedema, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496
15 (1985). The allegations in the complaint fail to state a RICO claim because they have not sufficiently
16 alleged facts to show that there is an enterprise, nor have they shown a pattern of racketeering acts.

17 An enterprise is any individual, partnership, corporation, or other legal entity, and any union of a
18 group of individuals associated in fact although not a legal entity. 18 U.S.C. § 1961(4). A plaintiff must
19 plead the existence of a formal or informal ongoing organization that functions as a unit. *United States v.*
20 *Turkette*, 452 U.S. 576, 580 (1981). The organization must have a structure and that structure must be
21 separate from the pattern of alleged racketeering, providing a mechanism for controlling and directing the
22 affairs of the enterprise. *Chang v. Chen*, 80 F.3d 1293, 1298 (1996). The structure must have a function
23 beyond the commission of the predicate acts; existence of some other activities is sufficient. *Chang*, 80
24 F.3d at 214; *United States v. Riccobene*, 709 F.2d 214, 223-224 (3d Cir. 1989) *as amended*. There must
25 also be a nexus between the enterprise and the predicate acts. *River City Markets, Inc. v. Fleming Foods*
26 *West, Inc.*, 960 F.2d 1458 (9th Cir. 1992). Plaintiffs have not shown that the individuals or entities named
27 in the complaint constitute an enterprise. Further, plaintiffs have not alleged any predicate act, much less a
28 pattern of racketeering acts, within the four year statute of limitations for a RICO claim. *See Agency*
Holding Corp. v. Malley-Duff & Assoc., 483 U.S. 143, 156 (1987). Further, plaintiffs have made numerous

1 conclusory statements, but have not alleged facts supporting those conclusory statements; and they have
2 speculated on the motives of defendants, without factual basis. Plaintiffs have not stated a claim for
3 violation of RICO. The claims are frivolous and without merit.

4 *Sherman Act Claims.* Plaintiffs allege that defendants violated the Sherman Act (15 U.S.C. §§ 1
5 and 2, by foreclosing plaintiffs' ability to sell real estate and products. In order to prove a conspiracy in
6 restraint of trade under § 1 or § 3 of the Sherman Act, 15 U.S.C.A. §§ 1 and 3, or a conspiracy to
7 monopolize under § 2 of the Sherman Act, 15 U.S.C.A. § 2, the plaintiff must allege (1) the conspiracy,
8 *Southway Theatres, Inc. v. Georgia Theatre Co.*, 672 F.2d 485 (5th Cir. 1982); *Cosmetic Gallery, Inc. v.*
9 *Schoeneman Corp.*, 495 F.3d 46 (3d Cir. 2007); (2) damage to the plaintiff, *Alexander Milburn Co. v.*
10 *Union Carbide & Carbon Corporation*, 15 F.2d 678 (C.C.A. 4th Cir. 1926); *Twin Ports Oil Co. v. Pure*
11 *Oil Co.*, 119 F.2d 747 (C.C.A. 8th Cir. 1941); and (3) a causal connection between the antitrust violations
12 and the plaintiff's injury, *Lefrak v. Arabian Am. Oil Co.*, 405 F. Supp. 597 (E.D. N.Y. 1975). A conspiracy
13 in violation of the Sherman Act is established where the evidence warrants a finding that the conspirators
14 had a unity of purpose or common design and understanding or a meeting of minds in an unlawful
15 arrangement. Plaintiffs have not alleged facts that could establish a conspiracy to monopolize or restrain
16 trade. This claim is frivolous and without merit.

17 **4. False Claims Act, 31 U.S.C. § 3729, et seq.**

18 Plaintiffs contend that defendants violated the False Claims Act (FCA). The basis for that claim is
19 unclear, although it is possible that the claim is based upon a contract entered into or approved by the
20 Lewis County Commissioners and the Washington Department of Health, using federal funds. The
21 contract, involving \$20,000 of federal funds, apparently was designed to assess and evaluate water
22 contamination in Lewis County. The Washington Department of Health provided a total of \$30,000 in
23 connection with the contract. The Amended Complaint apparently claims that the Lewis County
24 Commissioners never intended to fund a public water system, and that the contract was therefore entered
25 into fraudulently. In addition, the complaint alleges that there is \$10,000 unaccounted for, since the
26 federal funds amounted to only \$20,000.

27 To state a claim for a FCA violation, a plaintiff must allege that the defendant actually violated the
28 FCA by knowingly submitting a false claim or providing faulty goods to the government. *See* 31 U.S.C. §

3729(a) (describing acts that constitute violations of the FCA). The essential elements of FCA liability are the following: (1) a false statement or fraudulent course of conduct, (2) made with scienter, (3) that was material, causing (4) the government to pay out money or forfeit moneys due. *See* 31 U.S.C.A. § 3729 *et seq.*

The Amended Complaint does not show that there is was a false statement or fraudulent course of conduct on the part of any of the defendants. According to the Amended Complaint, the contract was issued for the purpose of evaluating possible contamination of the Doty-Dryad aquifer after the 2007 flood. Whether Lewis County subsequently decided to take action, or not, plaintiffs have not alleged facts that would establish a false statement or fraudulent course of conduct associated with the contract. Further, whether the Washington Department of Health paid \$10,000 in excess of the federal funds is irrelevant to the expenditure of federal funds. This is a frivolous claim.

5. Other Claims

Plaintiffs raise various issues that are difficult to categorize; these issues appear primarily at pages 134 - 153 of the Amended Complaint. Plaintiffs claim that Lewis County officials, defendant governor Christine Gregoire, the Washington Department of Health and its Secretary, and the Washington Department of Ecology refused to uphold and enforce the public policy of the United States regarding the use of public water within Lewis County; and that plaintiffs

have a well founded fear of persecution by these such officials who wish to silence the Beauregards by intentionally harassing, hindering, delaying and preventing and dissuading Beauregards from their continued activities exposing facts which cause Beauregards to have reasonable cause to believe, and therefore to report, that such officials are deliberately and knowingly and/or willfully failing and refusing to enforce the laws, regulations and public policy of the United States, which laws, regulations and policy relate to the appropriate and legitimate use of the navigable waters of the United States and the surface and ground waters of the State of Washington.

* * * * *

Such officials have subjected the Beauregards to economic persecution and otherwise have persecuted the Beauregards when the Beauregards having notified such officials that certain specified residents of western Lewis County have deliberately, knowingly and/or willfully violated the laws, regulations and public policy of the United States.

Amended Complaint, at 135. These claims speculate on the motivation of county and state officials, without factual support. The claims are frivolous and without merit.

Plaintiffs also contend that a declaration of Fred Chapman, filed in *Beauregard v. Lewis County Washington*, C05-5738RJB, constituted misrepresentation of material facts relating to surface waters in

1 Western Lewis County. There is no factual support for this claim. Further, any such claim is barred
2 because the issues in C05-5738RJB were fully litigated and resolved against plaintiffs.

3 Plaintiffs contend that Lewis County Commissioners obtained federal funds through a contract with
4 the Washington Department of Health, to assess water contamination in Lewis County, but took no action
5 to develop a public water system. Plaintiffs have not shown that he has standing to pursue a claim related
6 to this issue, nor has he stated a cognizable federal claim. This is a frivolous claim.

7 Plaintiffs also contend that they are frightened that Mr. Hillock may harm them by firing a gun at
8 them. This statement does not state a federal claim.

9 **6. Motion for Preliminary Injunction**

10 On November 12, 2009, plaintiffs filed a Motion for Preliminary Injunction, requesting that this
11 court issue an injunction, requiring defendants, "during the pendency of this action, to refrain from
12 engaging and/or continuing to engage in acts, which are inequitable and/or contrary to federal laws
13 governing interstate commerce, and/or; are the cause of irreparable injury and damage to the Beauregards,
14 and are contrary to equity and good conscience, public policy and public interests. Dkt. 3, at 2-3.

15 The basic function of such injunctive relief is to preserve the *status quo* pending a determination of
16 the action on the merits. *Los Angeles Memorial Coliseum Com'n v. National Football League*, 634 F.2d
17 1197, 1200 (9th Cir. 1980). A party "seeking a preliminary injunction must establish that he is likely to
18 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
19 the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural*
20 *Resources Defense Council*, 129 S.Ct. 365, 374 (2008).

21 Plaintiffs' claims are frivolous and without merit. By this order, the case is dismissed; plaintiffs
22 have not shown a likelihood of irreparable harm in the absence of preliminary relief. The balance of
23 equities does not tip in favor of plaintiffs. An injunction is not in the public interest. Plaintiffs' Motion to
24 Preliminary Injunction should be denied.

25 **7. Dismissal**

26 As noted above, a trial court may dismiss a complaint when the plaintiffs cannot possibly obtain
27 relief. This case is frivolous because there is no arguable basis in law or fact. Plaintiffs have continued to
28 pursue claims that have been dismissed or resolved against them in state and federal courts. They continue

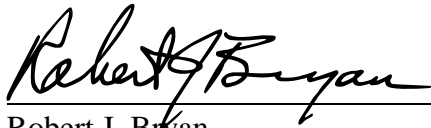
1 to allege conspiracy by private and public individuals, without any factual basis. This case, which required
2 an inordinate amount of the court's time to review pleadings and analyze claims, was a waste of the court's
3 resources. Plaintiffs should be informed that, if they continue to pursue frivolous claims in this court, they
4 may be subject to sanctions under Fed.R.Civ.P. 11.

5 Therefore, it is hereby

6 **ORDERED** that plaintiffs Motion for Preliminary Injunction (Dkt. 3) is **DENIED**. This case is
7 **DISMISSED** as frivolous and for failure to state a claim. Plaintiffs may not file another amended
8 complaint.

9 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
10 party appearing *pro se* at said party's last known address.

11 DATED this 2nd day of December, 2009.

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14 Robert J. Bryan
15 United States District Judge
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